

## EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

(APNs 097-01-039; 097-01-073; 104-01-102; and 104-03-036)

This Exclusive Negotiating Rights Agreement (this "Agreement") is entered into as of this 9<sup>th</sup> day of April, 2013 by and between the City of Santa Clara (the "City") and Related Santa Clara, LLC, a Delaware limited liability company (the "Developer") on the basis of the following facts:

### RECITALS

A. The City is the owner of four parcels of real property in the City of Santa Clara (APNs 097-01-039; 097-01-073; 104-01-102; and 104-03-036), as shown on the map attached to this Agreement as Exhibit A and incorporated herein by this reference (the "Property").

B. The Developer has proposed to develop various mixed uses on the Property, including but not limited to retail, entertainment, residential, and office (the "Project").

C. The City is interested in exploring the feasibility of the Project and has selected the Developer as a potential developer of the Project.

D. The development of the Project will further the City's goals of providing an economic stimulus for the businesses in the City's entertainment district and bring much needed tax revenue to the City.

E. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and the Developer of: a disposition and development agreement (the "DDA") pursuant to which the Developer will conduct specified development activities related to the Property; a Development Agreement ("DA"); and the form of property conveyance documents. A mutually acceptable DDA might provide for disposition of a leasehold interest in the Property to the Developer for ultimate development. As more fully set forth in Section 19, the Developer acknowledges and agrees that this Agreement in itself does not grant the Developer the right to develop the Project, nor does it obligate the Developer to any activities or costs to develop the Project, except for the preliminary analysis and negotiations contemplated by this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

#### EXCLUSIVE NEGOTIATIONS RIGHT

1. Good Faith Negotiations. The City and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 2, the terms of a DDA for the development of the Project on the Property. During the Negotiating Period, the parties shall

use good faith efforts to accomplish the respective tasks outlined herein to facilitate the negotiation of a mutually satisfactory DDA.

Among the issues to be addressed in the negotiations are the final leasehold consideration for each parcel comprising the Property, physical and land title conditions of the Property and remediation of any adverse conditions, the development schedule for the Project, financing of the Project, marketing and management of the Project, design and aesthetic considerations of the Project, and the provision of public improvements related to the Project.

2. **Negotiating Period.** The negotiating period (the "Negotiating Period") under this Agreement shall be eighteen (18) months, commencing on the date of this Agreement. The Negotiating Period may be extended for a period of an additional two periods of six (6) months each upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Approval of the extended negotiating period shall be at the discretion of the City Manager.

The Negotiating Period may only be extended or modified by formal amendment of this Agreement executed by the City and the Developer.

If a DDA has not been executed by the City and the Developer by the expiration of the Negotiating Period, then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement, except as set forth in Section 4 and Section 22. If a DDA is executed by the City and the Developer then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed DDA.

3. **Exclusive Negotiations.** During the Negotiating Period, the City shall not negotiate with any entity, other than the Developer, regarding development of the Property, or solicit or entertain bids or proposals to do so.

4. **City Consultant Costs Deposit.** The Developer acknowledges that the City shall expend substantial resources in the negotiation of the DDA and the form of the Ground Lease and performance of the tasks in this Agreement. In order for this Agreement to remain in effect, the Developer shall submit to the City as a good faith and consultant cost deposit, the sum of Two Hundred Thousand Dollars (\$200,000) (the "Deposit") within ten (10) days following full execution of this Agreement by the City and the Developer. The Deposit shall be provided in the form of a cashier's check made to the order of the City and be placed in a separate City deposit account. Any interest earned on the Deposit and any subsequent deposits shall be added to the total Deposit amount and may be used in accordance with this Agreement.

The City shall have no obligation to begin the negotiation of the DDA or the Ground Lease or to retain consultants until the Developer delivers the Deposit to the City. For the period of five (5) months following the date of the Agreement ("Due Diligence Period"), the Deposit shall be fully refundable, except for any costs incurred by the City as described below.

The Deposit may be used by the City to pay for the City's reasonable costs and expenses in negotiating and preparing the DDA, the form of Ground Lease and ancillary documents and



complying with planning and environmental review. Such costs may include, but are not limited to reasonable fees and services of third party traffic and economic consultants and attorneys, selected by the City, relating to the Project and the preparation of the DDA, Ground Lease and ancillary documents ("Consultant Costs"). Prior to incurring any Consultant Costs, the City shall submit an outline budget for use of the Deposit describing the general scope of work, cost and timing of expenditure.

During the Due Diligence Period, up to Twenty Five Thousand Dollars (\$25,000) of the Deposit may be used by the City for Consultant Costs to assist the City analyze potential relocation options for existing uses located on the Property.

Following the Due Diligence Period, the Developer shall be responsible for all of the City's Consultant Costs subject to the restrictions contained in this Section 4. Prior to the City incurring Consultant Costs in excess of the Deposit, the City shall provide the Developer with a schedule of the Consultant Costs incurred to date and an estimate of the additional Consultant Costs anticipated to be incurred. The Developer shall reasonably approve or disapprove the additional Consultant Costs within seven (7) days following the City's submittal of the anticipated additional Consultant Costs. If Developer disapproves the City's additional Consultant Costs, the City and Developer will meet and in good faith evaluate the estimate and attempt to reach a compromise budget acceptable to both parties. If no compromise budget can be reached within a reasonable time frame, the City may at that time put Developer on notice that such failure to approve the estimate of anticipated additional costs, may be deemed an event of default under the terms of this Agreement. The Developer shall deposit with the City the amount of the additional Consultant Costs as approved by the developer within fourteen (14) days of such approval. The additional amount shall be added to the Deposit. The City shall be reimbursed for all additional Consultant Costs approved by the Developer and incurred by the City prior to the date of the termination of this Agreement. To the extent this Agreement is terminated prior to or as of the end of the Negotiating Period and the City has incurred Consultant Costs that are less than the Deposit, and Developer has negotiated in good faith and is not in breach of this Agreement, the City shall return the unexpended balance of the Deposit to the Developer along with an accounting of the Consultant Costs incurred by the City.

If this Agreement is terminated by the City due to a failure by the Developer to negotiate in good faith under this Agreement the Deposit and any interest earned thereon shall be retained by the City, as more fully provided in Section 23.

#### NEGOTIATION TASKS

5. Overview. To facilitate negotiation of the DDA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.



6. Preliminary Scope of Project. Within one hundred eighty (180) days following the date of this Agreement, the Developer shall prepare and submit to the City a scope of development describing location and land uses of the proposed Project.

7. Site Plan. The Project as proposed may require that the Property be subdivided into additional parcels. The Developer shall prepare and submit to the City a proposed site plan identifying the size and shape of the parcels which comprise the Property (the "Development Parcels") and the location of the Project improvements to be constructed on each of the Development Parcels.

8. Developer Cooperation and Coordination with Adjacent Parcels. Developer acknowledges that the City has an existing Exclusive Negotiations Agreement with another developer for the adjacent City owned parcels ("Tasman Lots") south of the Property (APN 104-03-038 and -039). Developer agrees to cooperate with and, to the extent possible, coordinate site planning efforts with the developer of the Tasman Lots. The coordination of site planning efforts shall address access, entranceway placement, location of facilities and such other matters as may be necessary or desirable to integrate/enhance the function of both areas for development purposes. Such cooperation and coordination of the master planning for both areas will be at the sole cost and expense of the Developer.

9. Estimated Ground Lease Payments for the Property. The City and the Developer shall meet to determine the ground lease payments to be paid for the Property based on the highest and best use of the Property.

10. Financing and Costs of Development. The Developer shall provide the City with a detailed financial pro forma for the Project containing, among other matters, a detailed development budget setting forth the costs of the tasks to be undertaken by the Developer. The financial pro forma will be used to evidence the financial feasibility of the Project and to assist in the negotiation of terms regarding payment of costs of land and development. Prior to executing the DDA, the Developer shall provide financing commitments to the City evidencing the availability of financing to pay the Developer's projected costs.

11. Acquisition/Relocation of Existing Uses/Tenants. During the initial Five (5) months following the date of this Agreement, City will study and determine the feasibility of relocating public use facilities and existing tenants currently within the property boundaries. Responsibility for any potential acquisition/relocation costs will be mutually determined by the City and Developer.

12. Schedule of Performance. During the Due Diligence Period, the Developer and City will complete initial work and studies as described in Exhibit B. Following the Due Diligence Period, the Developer shall provide the City with a detailed schedule of performance for the Project which shall include, but not be limited to: a due diligence period, a plan setting forth the proposed timeline for the preparation of development concepts, community outreach and planning and environmental review/approval. Developer shall provide the City with a detailed schedule of performance to incorporate into the DDA which schedule shall include milestone for: development of each Development Parcel, specifically addressing the mix of



development uses, phases of development, the date for the submittal of construction plans to the City, the estimated date for close of escrow on the conveyance of the Development Parcels, and the dates for the commencement and completion of construction of Project components on the Development Parcels.

13. **Organizational Documents.** The Developer shall provide the City with its organizational documents as well as organization chart outlining key personnel's roles and responsibilities. Developer shall also submit to the City for its approval, copies of all operating agreements, joint venture agreements or other agreements between the members of the development entity, and such financial statements or tax returns reasonably required by the City to determine the Developer financial capability.

14. **Environmental Review.** The City shall prepare or cause to be prepared any environmental documentation required by the California Environmental Quality Act ("CEQA") for consideration of approval of the DDA and the Ground Lease; if any, provided, that nothing in this ENA Agreement shall be construed to compel the City to approve or make any particular findings with respect to such environmental documentation. The Developer shall provide such information as may be required to enable the City to prepare or cause preparation and consideration of any CEQA-required document, and shall otherwise generally cooperate with the City to complete this task. The Developer shall be responsible for all costs associated with the preparation of the required CEQA documentation.

15. **Due Diligence.** During the Negotiating Period, the Developer shall conduct the following due diligence activities:

a. **Property Adequacy Determination.** The Developer shall determine whether the Property is suitable for development of the Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the zoning of the Property, the massing of the proposed Project improvements and the parking requirements imposed on Projects of this type and the other environmental and regulatory factors that the Developer deems relevant. If, in the Developer's judgment based on such investigations and analyses, the Property is not suitable for development, the Developer may notify the City in writing prior to the expiration of the Negotiating Period of its determination. Upon such timely notification by the Developer, the remaining balance of the Deposit shall be immediately refunded to the Developer and this Agreement shall be terminated without further action of either party, and thereafter neither party shall have any further duties, obligations, rights, or liabilities under this Agreement, except as set forth in Section 22 and Section 23.

b. **Objections to Title.** Promptly following the execution of this Agreement, the Developer shall cause a title company mutually approved by the Developer and the City to issue a Preliminary Title Report (the "Report") on the Property to the Developer and the City. If the Developer objects to any exception appearing on the Report or should any title exception arise after the date of the Report, the Developer may object to such exception, provided such objection is made to the City in writing on or before 5 o'clock P.M. on the thirtieth (30th) day following the date of the Developer receives the Report. If the Developer objects to any exception to title, the City, within fifteen (15) days of receipt of Developer's objection shall

notify Developer in writing whether City elects to (i) cause the exception to be removed of record, (ii) obtain a commitment from Title Company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception, or (iii) terminate this Agreement unless the Developer elects to take title subject to such exception. If either party elects to terminate this Agreement pursuant to this subsection (c), the remaining balance or the Deposit shall be immediately refunded to the Developer and neither party shall thereafter have any obligations to or rights against the other hereunder, except as set forth in Section 22 and Section 23. If the Developer fails to provide any notification to the City regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this subsection (c) shall be deemed satisfied and this Agreement shall continue in effect.

16. Site Access. Developer and City will enter into a separate Agreement to provide Developer and its consultants with rights to enter, examine and conduct tests on the Property.

17. Reports. The Developer shall provide the City with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly upon their completion. The City shall provide the Developer with copies of all reports, studies, analyses, correspondence and similar documents (collectively, "documents") prepared or commissioned by the City with respect to this Agreement and the Project, promptly following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the City will need sufficient, detailed information about the proposed Project (including, without limitation, the financial information described in Section 9) to make informed decisions about the content and approval of the DDA. The City will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on the City by the Public Records Act (Government Code Sections 6253, et seq.). The Developer acknowledges that the City may share information provided by the Developer of a financial and potential proprietary nature with third party consultants and City Council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of a DDA, the City shall return to the Developer any information submitted by the Developer under this Agreement.

18. Progress Reports. From time to time as reasonably agreed upon by the parties, each party shall make oral or written progress reports advising the other party on studies being made and matters being evaluated by the reporting party with respect to this Agreement and the Project.

#### GENERAL PROVISIONS

19. Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Developer to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the City is not committing itself to or agreeing to undertake acquisition,



disposition, or exercise of control over any property. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City and City Council action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City.

20. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City:	City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Attention: City Manager
Developer:	Related Santa Clara 18201 Von Karman Avenue, Ste. 900 Irvine, CA 92612 Attention: William A. Witte

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

21. Costs and Expenses. Except for the Developer's obligation to fund certain City expenses under Section 4, above, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

22. No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer.

23. Defaults and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, the Developer's sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to the return of the unexpended portion of the Good Faith Deposit and any interest earned thereon, provided, however, if the uncured default is the result of the City's gross negligence or willful misconduct, the Developer's remedies shall include return of the original amount of the Good Faith Deposit. Following such termination and the return of the appropriate amount of the Good Faith Deposit and any interest earned thereon, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 22 shall survive such termination.

In the event of an uncured default by the Developer, the City's sole remedy shall be to terminate this Agreement and to retain any unexpended funds remaining in the Good Faith Deposit and any interest earned thereon. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 22 shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

24. Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

26. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

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IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

DEVELOPER:

RELATED SANTA CLARA, LLC, a Delaware  
limited liability company

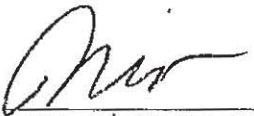
By: 

Its: Authorized Signatory

CITY:

CITY OF SANTA CLARA, a municipal  
corporation

ATTEST:

By:   
ROD DIRIDON, JR.,  
City Clerk

By:   
JULIO J. FUENTES  
City Manager

APPROVED AS TO FORM:


By:   
RICHARD E. NOSKY, JR.  
City Attorney

EXHIBIT A  
PROPERTY MAP  
[To Be Inserted]